

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION AND
THE ENVIRONMENTAL QUALITY BOARD

In the Matter of the Application of Great
River Energy for a Certificate of Need
for the Cambridge Peaking Plant

THIRD PREHEARING ORDER

This matter came before Administrative Law Judge Kathleen D. Sheehy on GRE's Motion to Strike portions of the rebuttal testimony of Kent Morton on behalf of Mankato Energy Center, LLC (MEC).

Michael J. Bradley, Esq., Moss & Barnett, 4800 Wells Fargo Center, 90 South Seventh Street, Minneapolis, Minnesota 55402, appeared on behalf of Great River Energy (GRE).

B. Andrew Brown, Esq., Dorsey & Whitney, LLC, 50 S. Sixth Street, Minneapolis, MN 55402, appeared on behalf of the Mankato Energy Center, LLC (MEC).

Based on the files and proceedings herein, the Administrative Law Judge makes the following:

ORDER

GRE's Motion to Strike portions of the rebuttal testimony of Kent Morton is DENIED; however, GRE may respond orally to this testimony during the hearing.

Dated this 27th day of July, 2005.

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

MEMORANDUM

MEC's position as an intervenor in this proceeding is that MEC is capable of supplying GRE's energy needs and that accordingly there is no need for GRE to build the proposed project. GRE's motion addresses two issues in the rebuttal testimony of Kent Morton on behalf of MEC: First, the opinions of Mr. Morton that GRE should be required to use an independent evaluator in future bidding processes; and second, Mr. Morton's criticisms of the use of generic information in GRE's 2005 Integrated Resource

Plan (IRP). GRE maintains this testimony is irrelevant, and even if relevant, should have been disclosed in the direct testimony. GRE maintains that by offering this evidence in rebuttal, MEC has denied GRE an opportunity to respond to it.

In the Certificate of Need (CON) Application, GRE relied on 2002 load forecast data that was accepted for planning purposes by the MPUC in GRE's 2003 IRP filing.¹ In the direct testimony of Kent Morton, filed pursuant to the First Prehearing Order on June 28, 2005, Morton discussed GRE's 2003 IRP filing. The substance of this portion of his testimony is that GRE's decision to self-build the proposed peaking project is inconsistent, in his view, with commitments GRE made in the 2003 IRP to use a competitive bidding process to meet long-term energy needs. When GRE made a request for proposals pursuant to this process in 2004, MEC responded, and its proposal was not accepted.² MEC's other witness, Brian Collins, also discussed the 2003 IRP and the 2004 IRP Update.³

GRE filed its 2005 IRP with the Commission on July 1, 2005, two days after the direct testimony of Morton and Collins was filed.

In his rebuttal testimony, Morton addressed the 2005 IRP and criticized the use of "generic" resource options in the resource planning model, contending the model should have used actual pricing information proposed by MEC in response to GRE's request for proposals. In addition, Morton offered the opinion, in response to positions taken by the Department of Commerce in its prefiled testimony, that an independent evaluator be used in GRE's future bidding processes.

It is true that GRE's future bidding processes, and the adequacy of the 2005 IRP itself, are not at issue in this proceeding; however, data contained in the 2005 IRP are undeniably relevant to the need for this project. Morton's rebuttal testimony provides some factual support for MEC's general position that GRE has failed to establish a need for the proposed project. It could not have been addressed in Morton's direct testimony because the 2005 IRP was filed two days later. In addition, much of the testimony GRE seeks to strike is MEC's criticism of the scrutiny and analysis of Department witnesses; in this regard, MEC's evidence is appropriate rebuttal. If cross-examination on the 2005 IRP is too remote from the issues in this case, it will be appropriately limited. But there is no basis for precluding MEC from supporting its arguments with the rebuttal testimony offered by Morton.

GRE's motion to strike the testimony is denied; however, GRE (and the Department if it so desires) may take a reasonable period of time to respond orally at the hearing to the matters raised in this testimony.

K.D.S.

¹ CON Application at 25.

² Direct Testimony of Kent Morton at 10-12, filed June 28, 2005.

³ Direct Testimony of Brian Collins at 3, filed June 28, 2005.